TEI-SJSU Tax Policy ConferenceInside Washington – What must be done, what might get done



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Agenda



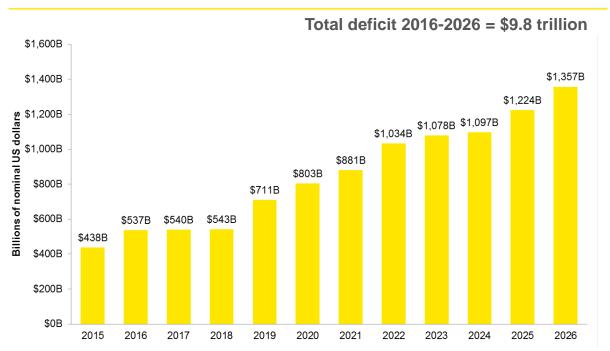
Federal budget overview

	FY 2015	FY 2016	FY 2017-26
Deficit	\$438 billion (actual)	\$537 billion (projected)	\$9.26 trillion* (projected)
Deficit as a percentage of GDP	2.5%	2.9%	4.4%
Debt held by public as a percentage of GDP	73.8%	75.4%	85.7% by 2026

Sources: CBO, The 2016 Long-Term Budget Outlook, July 12, 2016; CBO, Updated Budget Projections 2016 to 2026, March 24, 2016. *Projections reflect the extended baseline.

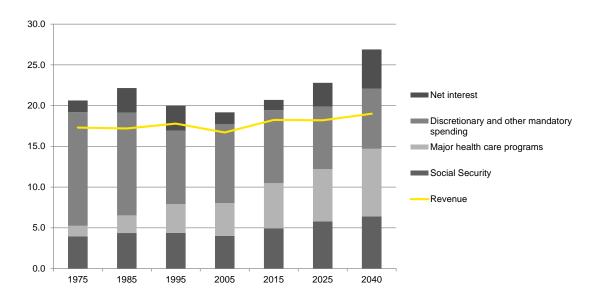
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CBO: Deficit outlook 2015-2026



Note: Projections are from the CBO's extended baseline in *The 2016 Long-Term Budget Outlook*. Source: CBO, *The 2016 Long-Term Budget Outlook*, July 12, 2016; CBO, *Updated Budget Projections 2016 to 2026*, March 24, 2016.

Spending, interest continue to grow as percent of GDP, while revenue remains flat



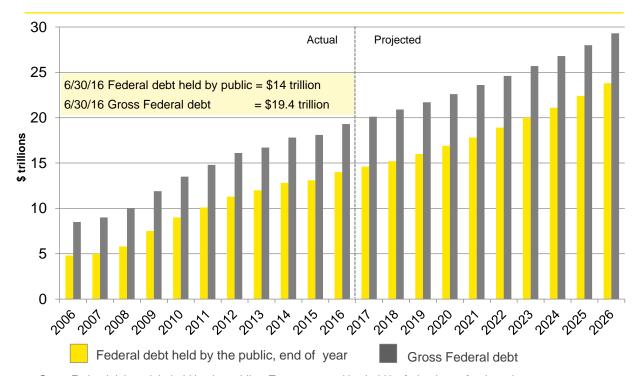
Note: Projections are from the CBO's extended baseline in *The 2016 Long-Term Budget Outlook*.

Sources: CBO, *The 2016 Long-Term Budget Outlook*, July 12, 2016; CBO, *Updated Budget Projections 2016 to 2026*, March 24, 2016; Office of Management and Budget, *Table 1.2—Summary of Receipts*, *Outlays*, *and Surpluses or Deficits (-)* as *Percentages of GDP: 1930–2018*.

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Federal debt



Gross Federal debt = debt held by the public + Treasury securities held by federal trust funds and accounts

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2015 review: deadline-driven legislating

<u>Legislation enacted in 2015</u> (1) proved that big things can get done in Congress and (2) took pressure off of action necessary in 2016

Spending legislation for FY 2016, delay of some ACA Consolidated Appropriations Act, 2016 Significant tax extenders package with 22 permanent

provisions

taxes



\$80 billion increase in spending caps over 2 years, suspension of debt limit



Bipartisan Budget Act of 2015 – enacted November 2, 2015

\$80 billion increase in discretionary spending caps over 2 years

\$50 billion for FY2016 \$30 billion for FY2017

Debt limit suspended through March 15, 2017

- Deal cleared major issues for remainder of Obama administration
- Changes in partnership audit rules included
 - Apply to partnership tax years beginning after December 31, 2017
 - A partnership may elect to be subject to the new procedures in earlier years
 - ► Election is the partnership's, not the partners'

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Bipartisan Budget Act of 2015 – partnership audit provisions

- New Rules (beginning for 2018 returns)
 - ► Examine partnership items in a "reviewed year"
 - Any adjustments taken into account by the partnership (not the individual partners) in the later year ("adjustment year")
 - No joint and several liability
 - ▶ Option to prove adjustment would be lower if done at partner level
 - Alternative issue adjusted K-1s to partners in "reviewed year"
- Significant issues for both new and existing partnerships
- Existing partnerships will need to amend their agreements to reflect new rules
- New partnership agreements should contain provisions addressing new audit procedures
- Gov't soliciting comments/further changes likely before 2018

Protecting Americans from Tax Hikes Act: select tax extender provisions

- Permanent provisions include
 - R&D credit
 - ▶ Election to deduct State and local general sales taxes
 - ▶ 15-year recovery period for qualified leasehold improvements, property, and qualified retail improvement property
 - Exception from subpart F income for active financing income
 - Various charitable and S corporation provisions
- 5-year extensions
 - CFC look-thru rule
 - Work opportunity tax credit
 - New markets tax credit
 - ▶ Bonus depreciation: phased down -- 50% for property placed in service during 2015, 2016 and 2017; 40% for 2018; and 30% for 2019
- Many provisions extended for two years (2015 and 2016)

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Protecting Americans from Tax Hikes Act: health provisions

- ▶ Delayed the 40% "Cadillac tax" on high-cost health plans
 - Cadillac tax delayed until the beginning of 2020 and bill allows employers to deduct the excise tax payments
- Suspended medical device excise tax for calendar years 2016 and 2017
- Suspended annual fee on health insurance providers for one year, during 2017

	2016	2017	2018	2019	2020
Cadillac tax	originally effe	ective in 2018	dela	yed	in effect
Medical device tax	suspended			in effect	
Health insurance tax	in effect	suspended		in effect	

Protecting Americans from Tax Hikes Act: REIT provisions

- ► Restriction on tax-free spinoffs involving REITs a spin-off involving a REIT will qualify as tax-free only if immediately after the distribution both the distributing and controlled corporation are REITs
 - ► Effective for distributions on or after December 7, 2015, with exception for certain ruling requests submitted to IRS on or before such date
- Exception from FIRPTA for certain stock of REITs
 - Includes increase from 5% to 10% of the maximum stock ownership a shareholder may hold in a publicly traded corporation to avoid having that stock treated as a US real property interest on disposition
- Exception from FIRPTA for interests held by foreign retirement or pension funds
 - Applies to interests held both directly or indirectly (through one or more partnerships)

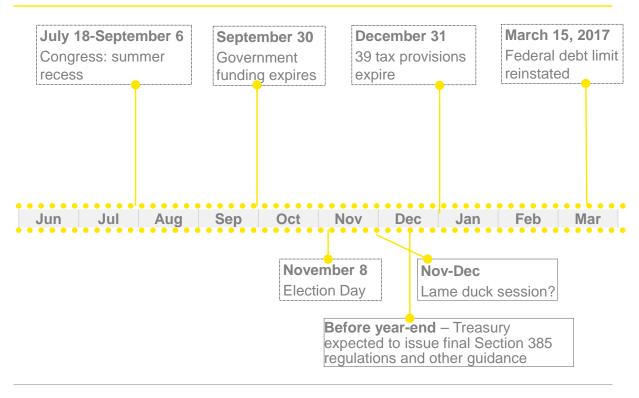
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Congressional timeline for 2016-2017



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Legislative agenda – miscellaneous points

- Debate in September over length of government funding bill
 - Likely short-term into December mandating need for lame-duck session
 - Any funding extension into early 2017 forces need for President/Congress to negotiate
- ▶ Trans-Pacific Partnership (TPP) trade agreement
 - Obama Administration pushing for a post-election vote
 - Congress unlikely to take it up in 2016, that may mean it does not get done for the foreseeable future
- Federal debt limit
 - ► Technically needs action by March 15, 2017
 - Actual receipts and expenditures will likely push out date needed for action
 - Possibly first major showdown between new President and new Congress
 - Could be vehicle for tax and other economic legislation

2016 tax policy agenda items

- Staff drafting GOP tax reform blueprint legislative text
- Possible release of Hatch corporate integration proposal
- 2016 expiring tax provisions
- Tax Treaties (7 plus multilateral convention)
- Possible miscellaneous tax bill
- Technical corrections package
- Section 385 regulations
- Other guidance (section 367(d)/foreign currency transaction rules/partnership audit rules/voluntary country-by-country rules)
- BEPS/State aid

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Tax reform: overall state of play



Republican Blueprint for tax reform

- ▶ 20% corporate rate, 25% business tax rate for pass-through entities
- Reflects a move toward a cash-flow approach for businesses
 - ▶ 100% expensing for capital expenditures, no deduction for net interest expense
- Territorial system of taxing foreign earnings
- Destination-basis tax system exempts exports while taxing imports
- lndividual rates: 12%, 25%, 33%
- Deductibility of mortgage interest and charitable donations retained



- Senate Finance Committee Chairman Hatch readying corporate integration proposal to eliminate the double taxation of corporate income
- Senate Finance Committee Ranking Member Wyden issued cost recovery and financial products drafts, working on international reform draft



Trump

- Corporate: 15% corporate rate; repeal of deferral; reduce "loopholes"
- Individual: 10%, 20%, and 25% rates; deductions pared back

Clinton

- ▶ Corporate: business tax reform to raise \$275 billion/5 years for infrastructure
- Individual: 30% min-tax rate on income over \$1 million; 4% surtax on income over \$5 million

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House Tax Reform Blueprint: overview

- Developed by Speaker Ryan and Ways and Means Committee Chairman Brady
- One of six "Better Way" policy agenda planks
- Pro-growth policy paper featuring shift toward a consumption tax base plus lower tax rates and base broadening for all individuals and businesses
 - Modernization of international system
 - Reformed IRS to be headed by non-political Administrator
- No legislative text or revenue estimate
- Ways & Means Committee intends to draft legislation based on Blueprint in 2016 to be ready for legislative action in 2017
 - Invites stakeholder input

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House Tax Reform Task Force Blueprint: highlights

Corporate tax rate	20%
Business income pass- through tax rate	25%
Taxation of future foreign earnings	Territorial, 100% exemption for dividends paid from foreign subsidiaries
Taxation of accumulated foreign earnings	8.75% for cash/cash equivalents, 3.5% otherwise
Border adjustability	Exports exempt from tax/imports taxed
Cost recovery	100% expensing
Interest expense	Not deductible on a net basis
Corporate tax preferences	Generally eliminated, except for R&D credit/LIFO
Individual tax rates	12%, 25%, 33%
Investment income	50% deduction, basic rates of 6%, 12.5%, and 16.5%
Individual deductions	Eliminated except for mortgage interest, charitable contributions/Std deduction increased
AMT/Estate tax	repealed

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House Tax Reform Blueprint: corporate

- ▶ 20% corporate rate
- 25% business tax rate for pass-through entities
- Reflects a move toward a cash-flow approach for businesses and a consumption-based tax
 - Similar to 2005 Bush tax panel's Growth and Investment Tax and plans advanced by Bush and Rubio candidacies for President
 - ▶ 100% expensing for all capital expenditures, tangible and intangible
 - No deduction for net interest expense
 - Special rules to be developed for financial services companies (banks, insurance, and leasing)
- Other corporate benefits eliminated, except for R&D credit/LIFO inventory method
- Repeal of corporate AMT

House Tax Reform Blueprint: international

- ► Future foreign earnings territorial system, 100% exemption for dividends paid from foreign subsidiaries
- Accumulated foreign earnings
 - ▶ 8.75% tax rate on previously untaxed accumulated foreign earnings held in cash or cash equivalents
 - > 3.5% tax rate on all other accumulated earnings
 - Tax liability payable over an eight-year period
- Destination-based tax system, under which border adjustments exempt exports from tax while taxing imports
 - Cash-flow approach for business taxation is basis for allowing US to counter border adjustments that other nations apply in their VATs
 - Details of proposal to be completed by year-end
 - Currently prohibited with respect to income taxes under WTO rules
 - Possible treaty issues

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House Tax Reform Blueprint: international continued

- No additional anti-base erosion measures
- Subpart F base company income rules repealed
- Subpart F personal holding company income rules retained
- No innovation box/patent box provisions

House Tax Reform Blueprint: individual

- Rate brackets: 12%, 25%, 33%
- Deductibility of mortgage interest and charitable donations retained, though possibly modified in the future
- Other itemized deductions would be repealed (including the state and local tax deduction)
 - Significantly increase the standard deduction
- Retain preferences for savings along with child tax credit, higher education credits, and EITC
- ▶ 50% deduction for capital gains, dividends, interest income
 - leading to basic rates of 6%, 12.5%, and 16.5%
- Individual AMT and estate tax would be repealed

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Potential economic impacts of House Blueprint tax plan

- ► Economic impact of the House Blueprint tax plan can be viewed in the context of two broad shifts from the current income tax:
 - Significant base broadening paired with rate reduction
 - ▶ Shift from the current income tax base towards a consumption tax base
- ▶ Both sets of changes would promote economic growth:
 - Lower tax rates increase after-tax returns to work and savings/investment thereby increasing labor supply and capital accumulation
 - Shift to a consumption tax base encourages more savings and investment thereby increasing capital accumulation
 - Increase forecast of the productive capacity of the economy
- Revenue neutral? Likely significant revenue loss without consideration of dynamic scoring
- Distributionally neutral? Further adjustments may be necessary to graduated tax rates, tax on investor returns, and tax base

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Hatch corporate integration proposal

- Finance Chairman Hatch crafting discussion draft designed to partially integrate the corporate and individual tax systems
- Reduce or eliminate double taxation through establishment of a corporate dividends-paid deduction (DPD)
- International tax regime likely unchanged
- Corporation withholds 35% tax on gross amount of all dividends
 - Withheld amount would be a "nonrefundable credit" for the shareholder
- ▶ 20% preferential rate for qualified dividends would be repealed
- Corporation withholds 35% tax on the gross amount of interest paid to creditors
- Policy rationale
 - Narrow tax treatment gap between C corps and pass-throughs
 - Create some incentive to repatriate foreign earnings
 - ▶ Eliminate tax code bias in favor of debt
 - Withholding tax on interest viewed as curbing "earnings stripping"

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Senator Wyden's discussion drafts

- ► Cost recovery (April 26): Assets would be assigned to pools based on current MACRS assignments: 49%, 34%, 25%, 18%, 11%, and 8%.
 - ► Each pool's balance would be increased by the amount of any assets placed in service assigned to each pool, and reduced by the proceeds of any asset dispositions from the pool, previous depreciation deductions.
 - At year-end, each final pool balance would be multiplied by its applicable recovery rate to determine the year's depreciation deductions.
 - Similar to a 2013 plan by former Finance Committee Chairman Baucus
- <u>Derivatives (May 18)</u>: Would require mark-to-market and ordinary tax treatment for derivatives
 - ▶ Goes beyond proposals by Camp and President Obama to create comprehensive regime for those who have obligations or rights to a derivative and that own also the underlying investment
 - Draft would treat as ordinary in character, gains and losses from bonds or other indebtedness held by insurance companies

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2016 U.S. elections overview

Presidential

Election Day: Nov. 8, 2016

House

- ► At 247 seats, largest Republican majority in House since 1930
- ► All 435 seats up for re-election
- ► Likely to stay under Republican control

Senate

- ► 54 Republicans, 46 Democrats (includes 2 independents)
- ➤ 24 Republican, 10 Democratic seats up for re-election
- ► Control up for grabs





Congressional profile, 114th Congress

Senate, 114th Congress	House, 114th Congress	
54 / 46*	247 / 186*	
Republicans Democrats * Includes 2 independents	Republicans Democrats *2 vacancies Fattah (PA)/Takai (HI)	
24 Republican, 10 Democratic seats up for re-election in 2016	At 247 seats, currently largest Republican majority in House since 1930	
 Majority Leader: Mitch McConnell (R-KY) Majority Whip: John Cornyn (R-TX) Republican Conference Chair: John Thune (R-SD) Democratic leader: Harry Reid (D-NV) Democratic Whip: Dick Durbin (D-IL) Democratic Conference Vice Chair: Chuck Schumer (D-NY) 	 Speaker Paul Ryan (R-WI) Majority Leader: Kevin McCarthy (R-CA) Majority Whip: Steve Scalise (R-LA) Democratic leader: Nancy Pelosi (D-CA) Democratic Whip: Steny Hoyer (D-MD) Asst. Democratic Leader: James Clyburn (D-SC) 	
Strategic policy adviser to the DPCC: Elizabeth Warren (D-MA)		

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2016 Senate elections

Seats up for re-election: 24 Republican, 10 Democratic

Democrats	Republicans	
 Michael Bennet (D-CO) R. Blumenthal (D-CT) Barbara Boxer (D-CA) retiring Pat Leahy (D-VT) Barbara Mikulski (D-MD) retiring Patty Murray (D-WA) Harry Reid (D-NV) retiring Brian Schatz (D-HI) Chuck Schumer (D-NY) Ron Wyden (D-OR) 	 ▶ Kelly Ayotte (R-NH) ▶ Roy Blunt (R-MO) ▶ John Boozman (R-AR) ▶ Richard Burr (R-NC) ▶ Dan Coats (R-IN) retiring ▶ Mike Crapo (R-ID) ▶ Chuck Grassley (R-IA) ▶ John Hoeven (R-ND) ▶ Johnny Isakson (R-GA) ▶ Ron Johnson (R-WI) ▶ Mark Kirk (R-IL) ▶ James Lankford (R-OK) ▶ Mike Lee (R-UT) 	 ▶ John McCain (R-AZ) ▶ Jerry Moran (R-KS) ▶ Lisa Murkowski (R-AK) ▶ Rand Paul (R-KY) ▶ Rob Portman (R-OH) ▶ Marco Rubio (R-FL) ▶ Tim Scott (R-SC) ▶ Richard Shelby (R-AL) ▶ John Thune (R-SD) ▶ Pat Toomey (R-PA) ▶ David Vitter (R-LA) retiring

■ = state won by President Obama in 2012 presidential election

GOP Senators up for re-election in states President Obama won twice

New Hampshire	 ▶ Republican Sen. Kelly Ayotte v. Democratic Governor Maggie Hassan ▶ Virtual dead heat ▶ Ayotte emphasizes efforts to fight opioid abuse and support of defense/shipbuilding ▶ Hassan criticized Ayotte's votes to repeal the ACA, defund Planned Parenthood, etc.
Pennsylvania	 Republican Sen. Pat Toomey v. Democrat Katie McGinty Toomey, who won just 51% of the vote in 2010, currently leading
Ohio	 Republican Sen. Rob Portman v. Democratic Governor Ted Strickland Close race, Portman with a slight lead Candidates accuse each other of supporting trade policies that shed jobs
Illinois	Republican Sen. Mark Kirk v. Democratic Rep. Tammy Duckworth Kirk, seen as most vulnerable GOP incumbent
Wisconsin	 ▶ Republican Sen. Ron Johnson v. former Senator Russ Feingold ▶ Feingold currently leading
Iowa	 Republican Sen. Chuck Grassley v. former Lt. Governor Patty Judge Grassley, Judiciary Chairman, faced controversy over Supreme Court nomination Grassley leading
Florida	► Sen. Rubio running after dropping presidential bid, currently leading
Indiana	 Former Democratic Gov. and Sen. Evan Bayh entered race in late July against Ways & Means Member, Rep. Todd Young Race now tilting Democratic given Bayh campaign funds and name recognition

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2018 Senate elections

Seats up for re-election: 23 Democratic plus 2 Independents, 8 Republican

Democrats		Republicans
Tammy Baldwin (D-WI)	Amy Klobuchar (D-MN)	John Barasso (R-WY)
Sherrod Brown (D-OH)	Joe Manchin (D-WV)	Bob Corker (R-TN)
Maria Cantwell (D-WA)	Claire McCaskill (D-MO)	Ted Cruz (R-TX)
Ben Cardin (D-MD)	Robert Menendez (D-NJ)	Deb Fischer (R-NE)
Tom Carper (D-DE)	Chris Murphy (D-CT)	Jeff Flake (R-AZ)
Bob Casey (D-PA)	Bill Nelson (D-FL)	Orrin Hatch (R-UT)
Joe Donnelly (D-IN)	Debbie Stabenow (D-MI)	Dean Heller (R-NV)
Dianne Feinstein (D-CA)	Jon Tester (D-MT)	Roger Wicker (R-MS)
Kirsten Gillibrand (D-NY)	Elizabeth Warren (D-MA)	
Martin Heinrich (D-NM)	Sheldon Whitehouse (D-RI)	
Heidi Heitkamp (D-ND)		
Mazie Hirono (D-HI)	+2 Independents that caucus with	
Tim Kaine (D-VA)	Democrats:	
	Angus King (I-ME)	
	Bernie Sanders (I-VT)	

Candidate tax plans: corporate taxes

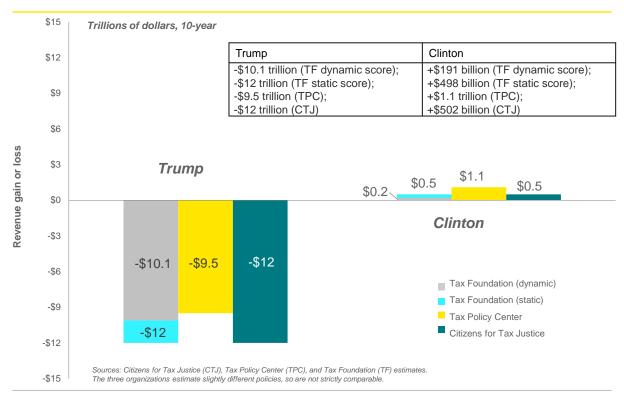
	Trump	Clinton	
Top corporate tax rate (now 35%)	15%	► "Reform our tax code to reward	
Top pass-through rate (now 39.6%)	15%	businesses that invest in workers and production here in America,	
Taxation of future foreign earnings (now worldwide)	Immediate worldwide taxation, repeal of deferral	rather than overseas" Find the Bermuda reinsurance	
Mandatory tax, untaxed accumulated foreign earnings	10%	loophole, and tax gaming through complex derivative trading"	
Inversions	Lowering taxes is the only way to prevent inversions	Exit tax; 50% Sec. 7874 test; limit earnings stripping; "claw back" prior years' tax benefits associated with moving jobs abroad	
Interest	"Reasonable cap" on deductibility		
R&D (now 20% credit or alternative credit of 14% based on 3-year average)		Strengthen R&D credit using revenue from "closing loopholes"	
Other business provisions	"Reducing or eliminating some corporate loopholes"	Eliminate tax incentives for fossil fuels	

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Candidate tax plans: individual taxes

	Trump	Clinton
Individual tax rates (now 10%,	10%, 20%, 25%	Buffett Rule to require minimum 30%
15%, 25%, 28%, 33%, 35%,		effective tax rate for annual incomes over \$1
39.6%)		million; 4% Fair Share Surcharge on annual
		income over \$5 million
Top capital gains and dividends	15% for those in 20% bracket; 20% for	Assets held less than 2 years taxed as
rate (now 23.8%)	those in 25% bracket; 3.8% net	ordinary income; 23.8% capital gains rate on
	investment income tax repealed	assets held 6 or more years
Carried interest (now capital gains)	Ordinary income	Ordinary income
Estate tax (now 40%, \$5.43 million	Repealed	Return to 2009 regime of \$3.5 million
exemption)		exemption, 45% rate
Individual credits		Tax credit for caregivers of elderly, disabled
		relatives
Charitable Contributions (now	No change	Cap all itemized deductions at a tax value of
capped at 50% of AGI)		28%
Mortgage Interest (now deduction	No change	
on first \$1 million)		
Other Itemized Deductions	Pared back as tax rate increases	
PEP and Pease (for income	Unspecified "steepening the curve" of	
\$300k/family \$250k/individual	PEP and Pease	
Life ins. build-up (now not included	Included in income for high earners	
in income)		

Candidates' tax plan revenue estimates



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Clinton Presidency – post-election political scenarios: tax

Republican Congress

- Clinton likely to be more proficient dealmaker than Obama
- Possible compromise: economic/jobs package that includes "middle class" tax cut and business tax reform tied to infrastructure investment
 - Clinton proposed \$275 billion in infrastructure funding as early priority
 - Speaker Ryan had extensive negotiations with Senator Schumer in 2015
- Partisan positions over revenue goal likely to impede comprehensive tax reform
- House GOP expected to move on tax reform regardless of cooperation

Democratic Congress

- Clinton and Democratic Senate would seek to increase taxes on higherincome Americans, possibly to pay for other priorities
 - ▶ Buffett Rule 30% effective tax rate for annual incomes over \$1 million
 - ▶ Fair Share surtax on annual income over \$5 million
 - 28% cap on tax value of itemized deductions and other tax preferences
 - International tax reform tied to infrastructure a possibility

Split Congress

 Control of either chamber by Republicans would likely serve as a backstop for Democratic efforts to increase taxes

Trump Presidency – post-election political scenarios: tax

Republican Congress

- Both sides have said tax reform is an early priority
 - Trump has vowed to act on tax reform in first 100 days
- Revenue losing comprehensive tax reform possible via reconciliation rules
- Plans are not identical, but there is enough overlap for compromise
 - Similar interest in base broadening to lower rates for all individuals and corporations, including pass-through entities
 - ▶ House GOP plan moves toward cash flow consumption tax, border adjustability
 - > Trump plan would repeal deferral without switch to territorial system
- Reconciliation would likely be used if Republicans don't have 60 votes in Senate

Democratic Congress

- In general, a combative atmosphere would be expected between a Trump White House and Democratic Congress
 - Democrats would be expected to oppose a large tax cut, and would instead seek to pass tax increase proposals that would likely be vetoed

Split Congress

Control of either chamber by Democrats would likely serve as a backstop against a Trump tax reform plan that would cut taxes for higher-income Americans

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First major piece of legislation recent presidents enacted after taking office

Barack Obama Took office January 20, 2009	American Recovery and Reinvestment Act of 2009 Enacted February 17, 2009 ► Stimulus legislation, included bonus depreciation
George W. Bush Took office January 20, 2001	Economic Growth and Tax Relief Reconciliation Act of 2001 Enacted June 7, 2001 ► The "Bush tax cuts" reduced individual rates, estate tax
Bill Clinton Took office January 20, 1993	Omnibus Budget Reconciliation Act of 1993 Enacted August 10,1993 ▶ Increased individual, corporate taxes
George H. W. Bush Took office January 20, 1989	Omnibus Budget Reconciliation Act of 1990 Enacted November 5,1990 ▶ Increased individual taxes despite 'no new tax' pledge
Ronald Reagan Took office January 20, 1981	Economic Recovery Tax Act of 1981 Enacted August 13, 1981 ► Sharply reduced individual, corporate taxes